MERCU PUSU DEVELOPMENT SDN BHD
v. SETARA JAYA SDN BHD

HIGH COURT MALAYA, KUALA LUMPUR
JOHAN LEE KIEN HOW JC
[CIVIL SUIT NO: WA-22NCVC-202-04-2020]
6 JUNE 2021

Abstract – *(i) A tenancy agreement between a tenant and the land's previous owner comes to an end once the land is registered in a new proprietor's name, and any continued occupation thereof by the tenant without the registered proprietor's consent, or without a fresh agreement being entered into between them is illegal and unlawful; and (ii) A 'qualified title' in land is qualified only as to its boundary, border and measurement; as to the rights conferred to its proprietor, it is similar to those conferred on the holder of a final title.*

CIVIL PROCEDURE: *Summary judgment – Application for – Tenancy agreement entered between tenant and land's previous owner – Company alienated land and registered as land's registered proprietor after tenancy agreement entered – Application for declaration that tenant's occupation of land illegal and vacant possession ought be handed to company – Whether plain and obvious tenant had no defence against application – Whether tenant's occupation of land justified by existence of tenancy agreement – Whether alienation of land to company proper and complete – Whether qualified title confers similar proprietary right as final title – Whether tenancy agreement came to end after date company registered as land proprietor – Rules of Court 2012, O. 14 r. 1*

On 26 May 2016, a piece of land situated at Taman Tasik Indah, Mukim Batu ('land') was alienated to the plaintiff by the Office of the Director of Lands and Mines of Wilayah Persekutuan ('ODLM') on behalf of the Jawatankuasa Kerja Tanah Wilayah Persekutuan Kuala Lumpur ('JKKT WPKL'), and thereafter, was registered as its proprietor on 23 October 2017. Upon discovery that the land was under the occupation of the defendant, the plaintiff, on 3 June 2019, issued a notice of vacant possession, demanding the defendant to move out from the land. However, the defendant refused to comply. Relying on the ground that there existed a tenancy agreement between the defendant and the Railway Assets Corporation ('RAC'), the defendant alleged that its occupation upon the said land was legal. Hence, the plaintiff, on 19 February 2020, issued a notice of demand demanding the defendant to: (i) yield vacant possession of the land within seven days; and (ii) pay damages amounting to RM2,445,494.80, *ie*, the monthly rental of RM87,339.10 x 28 months (for the period from 23 October 2017 until 23 February 2020 and still continuing)). The demand was yet again refused by the defendant and as a result, the plaintiff initiated an action against the

defendant for *inter alia*: (i) a declaration the defendant's occupation and stay upon the land was illegal and unlawful; (ii) the defendant to demolish all the structures illegally erected at its own cost; (iii) the defendant to yield vacant possession of the said land to the plaintiff within seven days from date of the court order. The plaintiff also filed and application for summary judgment under O. 14 r. 1 of the Rules of Court 2012 ('ROC'), praying for among others: (i) the defendant's occupation and stay upon the said land was unlawful and illegal; (ii) the defendant to demolish all illegally erected structures on the said land at its own cost and to yield vacant possession of the said land to the plaintiff within seven days from date of court order; (iii) in the event the defendant refused to comply with prayer (ii), the defendant to pay and bear all the cost of the structures' demolishment; (iv) the defendant to pay rental of the land RM87,338.28 per month with an interest of 5% per annum commencing from 23 October 2017 until date of vacation possession handed to the plaintiff; and (v) the defendant to bear the costs of the land survey report, the valuation report, the plaintiff's legal fee and the costs of this proceeding.

Held (allowing application with costs):

(1) Upon the approval of the State Authority of the application to alienate the land to the plaintiff, the process and procedure laid down in the NLC was triggered and upon the acceptance of the alienation, the plaintiff paid the premium officially stated in Form 5A under the NLC, amounting to RM20,098,855. In due course, the ODLM issued the official receipt and the plaintiff was registered as the registered proprietor of the land, having the absolute right to enjoy and deal with the land. The title was given as a qualified title pending the finalisation of the land border and its measurement. The issuance of the issued document of title ('IDT') had sealed the proprietorship of the plaintiff in the land. On the contrary, nothing had been adduced by the defendant to contest these. Therefore, the defendant's mere allegation in respect of this issue was but a futile act. (paras 56-59, 62 & 65)

(2) The defendant's attempt to attack the plaintiff's title and right obtained therewith merely because it was of qualified title failed miserably. A qualified title is 'qualified' and not final only in respect of the boundary, border and measurement of the land. A qualified title issued under the NLC confers the same rights as those conferred by a final title. In the present case, the alienation of the land had been perfected and the plaintiff had been registered as the proprietor of the land in the RDT, and the IDT had also been issued to the plaintiff. There had never been any attempt or letter by the ODLM or JKKT WPKL to revoke, cancel or forfeit the plaintiff's title. As such, the evidence on the plaintiff's proprietorship in the land was undoubtable, solid and conclusive. Since proprietorship came with indefeasibility, it did not matter whether the plaintiff's title was qualified or final. (paras 67, 73, 78 & 80)

(3) As at 23 October 2017, the plaintiff was the land's registered proprietor with the absolute right to use, develop or construct buildings on the said land. Any stay on the land must be with the plaintiff's consent, either as licensee or a tenant. Further, any previous tenancy entered with the land previous owner would also come to an end unless the plaintiff wished to continue with such tenancy. However, this was not the case here. No fresh tenancy agreement was entered by the parties. In fact, upon realising the defendant's occupation on the land, the plaintiff immediately and rightfully issued the 3 June 2019 notice of vacant possession to the defendant demanding it to leave the land. (paras 84, 85 & 95)

(4) In a tenancy exempt from registration, if a tenant was so concerned about his stay and his right as a tenant, after the land owner had changed hands, he could apply to the Registrar to have his interest registered under s. 316 of the NLC. Upon receiving the application, the Registrar would duly comply with the procedure laid down in s. 317 of the NLC and would endorse the words 'exempt tenancy claimed' in the RDT. *Via* such endorsement, all subsequent dealing on the land would be subjected to this tenancy exempt from registration. However, no such application had ever been made by the defendant. There was no recourse against the plaintiff to recognise or honour the terms of the tenancy agreement. (paras 91 & 92)

(5) As at 31 August 2017, the tenancy agreement had already expired and no renewal had been effected by the RAC due to the defendant's failure to pay the discounted rental arrears demanded by the RAC. In fact, *vide* letters dated 8 November 2018 and 13 December 2018, the RAC had issued to the defendant informing the same had been illegally occupying the land starting from 1 September 2017, and, for the vacant possession to be delivered to it within prescribed period. Other than that, referring to the key provisions of the tenancy agreement, it was stipulated that even if the tenancy agreement was still subsisting and operative, it could still be terminated by a 30-day notice. Hence, there was nothing to stop the determination of the same. The allegation by the defendant that it had the right to remain in the land and refused to move out as his occupation of the land was legal was totally without basis. (paras 101-107)

(6) The defendant plainly and obviously had no defence against the plaintiff's claim. Hence, the plaintiff's application under O. 14 r. 1 of the ROC was allowed, and declarations were entered, *inter alia*, that: (i) the defendant had been illegally occupying the land since 23 October 2017; and (ii) the defendant demolishes all structures that had been

A erected on the said land, and, in the event this was not done, the defendant to bear all the costs of the demolition done by the plaintiff or its agent(s). (paras 109 & 110)

Case(s) referred to:

Abdullah Rohani v. Punca Klasik Sdn Bhd [2004] 1 CLJ 773 CA ***(refd)***

B *Ali Hamid & Others v. Abdul Malik Ahmad [2020] MLJU 884* ***(refd)***

Bank Negara Malaysia v. Mohd Ismail Ali Johor & Ors [1992] 1 CLJ 627; [1992] 1 CLJ (Rep) 14 SC ***(refd)***

Bijak Utama Sdn Bhd v. Adwin Sdn Bhd [1997] 1 LNS 314 HC ***(refd)***

Cahaya Ideal (M) Sdn Bhd v. Orang-Orang Yang Mengenali Diri Sebagai 'Ponga' & Ors [1999] 3 CLJ 257 HC ***(refd)***

C *Fadzil Mohamed Noor v. Universiti Teknologi Malaysia [1981] 1 LNS 214 FC* ***(refd)***

Hotel Ambassador (M) Sdn Bhd v. Seapower (M) Sdn Bhd [1991] 1 CLJ 656; [1991] 1 CLJ (Rep) 174 SC ***(refd)***

Izham Shafie lwn. Ahmad Hassan [2020] 1 LNS 2229 HC ***(refd)***

Leong Ah Kew & Anor v. Yong Chang Industries Sdn Bhd & Ors And Another Case [2019] 1 LNS 1288 HC ***(refd)***

D *Lim Yong Fung lwn. GBT Industries Sdn Bhd [2016] 1 LNS 994 HC* ***(refd)***

Norimah Mohamed & Ors v. Bukit Lenang Development Sdn Bhd & Other Appeals [2000] 3 CLJ 133 CA ***(refd)***

North East Plantations Sdn Bhd lwn. Pentadbir Tanah Daerah Dungun & Satu Lagi [2011] 4 CLJ 729 FC ***(dist)***

E *Pembinaan Batu Jaya Sdn Bhd v. Pengarah Tanah Dan Galian, Selangor & Anor [2016] 5 CLJ 250 CA* ***(refd)***

Salleh Hussein v. Punca Klasik Sdn Bhd & Anor [1997] 1 LNS 392 HC ***(refd)***

Samlem Trading Sdn Bhd v. Welley Timber Industries Sdn Bhd & Ors [2020] 1 LNS 1811 HC ***(refd)***

Sivaperuman v. Heah Seok Yeok Realty Sdn Bhd [1978] 1 LNS 184 FC ***(refd)***

F *Teh Bee v. K Maruthamuthu [1977] 1 LNS 134 FC* ***(refd)***

Teo Bee Ann & Anor v. Goh Say Dock & Anor [2010] 9 CLJ 238 HC ***(refd)***

Yap Lai Yoke v. Chin Fook Wah & Another Case [1984] 2 CLJ 282; [1984] 1 CLJ (Rep) 452 FC ***(refd)***

Zelcos Laboratory Sdn Bhd v. FR Development Asia Sdn Bhd & Ors [2020] 1 LNS 1775 HC ***(refd)***

G **Legislation referred to:**

Federal Constitution, arts. 13, 85, 86

Federal Lands Commissioner Act 1957, s. 7(1)

National Land Code, ss. 5, 42, 66(2), 76, 78(3), 89, 127, 176(2), 189, 213, 223, 316, 317, 340(2), 341

H Rules of Court 2012, O. 14 r. 1

For the plaintiff - KF EE & Hiew Yee Peng; M/s KF Ee & Co

For the defendant - Ravin Woodhull & T Nayagam; M/s Tuang, Chu & Co

Reported by Syamim Ariffin

I

JUDGMENT
(encl. 19)

Johan Lee Kien How JC:

Introduction

[1] The land in issue is all that piece of land known as H.S.(D) 120442, PT 27048, Mukim Batu, Daerah Kuala Lumpur with an area of 16,228 sq m located at Taman Tasik Indah, Mukim Batu ("the land"). On 26 May 2016, the Office of the Director of Lands and Mines of Wilayah Persekutuan ("ODLM") on behalf of the "Jawatankuasa Kerja Tanah Wilayah Persekutuan Kuala Lumpur" ("JKKT WPKL") has approved the application to alienate the land to the plaintiff.

[2] The plaintiff was later registered as the registered proprietor of the land on 23 October 2017. This is clearly confirmed in both the registered document of title ("RDT") (as shown in the title search report dated 7 November 2017) and also the issued document of title ("IDT") issued.

[3] Upon the discovery of the fact that the land has been occupied by the defendant, plaintiff *vide* their former solicitors, M/s KK Chong & Company issued a notice of vacant possession dated 3 June 2019 to the defendant demanding the defendant to move out of the land and to give the vacant possession to the plaintiff.

[4] Through a letter dated 24 June 2019, the defendant *vide* its solicitors, M/s Nayagam & Partners responded and refused to comply with the said notice of vacant possession and alleged that there is a tenancy agreement between the defendant and Railway Assets Corporation ("RAC").

[5] In furtherance to that, the plaintiff then engaged a professional land surveyor, and the finding of the land surveyor are as follows:

(i) there exists a perimeter surrounding the land with fence having only one entrance and exit each supervised by the guardhouse;

(ii) there were 101 buses on the land during the land inspection carried out by the land surveyor; and

(iii) the land has been fully occupied.

[6] Simultaneously, the plaintiff also engaged a professional valuer in which the valuation report dated 4 March 2020 shows that the rental market value of the land is RM87,338.28 per month.

[7] Then, the plaintiff *vide* its new solicitors, M/s KF Ee & Co issued a notice of demand dated 19 February 2020 to the defendant's solicitors demanded that:

[8] The defendant to yield the vacant possession of the land to the plaintiff within seven days.

[9] The defendant to pay damages amounting to RM2,445,494.80 (the monthly rental of RM87,339.10 x 28 months (for the period of 23 October 2017 until 23 February 2020 and still continuing) to the plaintiff.

[10] Due to the refusal of the defendant to comply with the notice of demand, the plaintiff then filed a writ and statement of claim on 14 April 2020 against the defendant for, *inter alia*, declaration that the defendant who is occupying or staying at the land as unlawful and illegal and the defendant to demolish the structures (if any) illegally erected on the land at its own cost and to yield vacant possession of the land to the plaintiff within seven days from the date of the court order.

[11] The plaintiff also filed a notice of application in encl. 19 – the application to enter a summary judgment under O. 14 r. 1 Rules of Court 2012 ("application") praying for the following:

(i) a declaration that the defendant who is occupying or staying on the land held under the Temporary Title Deed H.S.(D) 120442, PT27048, Mukim Batu, Daerah Kuala Lumpur (hereinafter to be referred to as 'the land') as unlawful and illegal;

(ii) the defendant to demolish the structures (if any) illegally erected on the land at its own cost and to yield vacant possession of the land to the plaintiff being the registered proprietor of the land within seven days from the date of this court order;

(iii) in the event the defendant refused, failed and/or neglected to demolish the structures (if any) illegally erected on the said land within seven days from the date of this court order, the defendant is to pay and bear all the costs for demolishment of structures (if any) to the plaintiff;

(iv) the defendant to pay rental on the land amounting to RM87,338.28 per month commencing from the date of the plaintiff registered as the registered proprietor of the land commencing from 23 October 2017 until the date of vacant possession to the plaintiff;

(v) the defendant to pay the interest of 5% per annum for the rental of the land on the sum of RM87,338.28 per month to the plaintiff from the date the plaintiff become the registered proprietor of the land commencing from 23 October 2017 until the date of vacant possession delivered to the plaintiff;

(vi) the defendant to pay the cost of the land survey report dated 19 February 2020 for the sum of RM5,830 to the plaintiff;

(vii) the defendant to pay the cost of the valuation report dated 4 March 2020 for the sum of RM28,000 to the plaintiff;

(viii) the defendant to pay the cost (on solicitors-client basis) to the plaintiff;

(ix) the defendant to pay cost of this proceeding to the plaintiff; and

(x) any other reliefs, remedies this Honourable Court thinks fit and just.

[12] The application is supported by an affidavit in support affirmed by Saw Chun Hao on 9 December 2020 (encl. 20). Subsequently, the defendant filed in its affidavit in reply (encl. 21) affirmed by Datuk Abd Razak bin Muhamad on 30 December 2020. Immediately, the plaintiff responded through an affidavit in reply by Saw Chun Hao on 13 January 2021 (encl. 22).

[13] The parties then filed in their written submissions, respectively. The plaintiff and defendant also filed in their rebuttal in writing. On 13 April 2021, counsels for both parties further submitted orally.

[14] At the conclusion of the submission, I find that the plaintiff has satisfied the court that the defendant plainly and obviously has no defence to the plaintiff's claim. Hence, I allowed the plaintiff's claim with costs.

[15] I allowed the plaintiff's application for a summary judgment on the grounds stated in the later part of this grounds of judgment.

Submission By The Parties

[16] In opposing the plaintiff's application, the defendant had raised abundant grounds to support its argument. Those grounds are reproduced as follows:

(i) issue of prejudice from the plaintiff's application;

(ii) defence of laches/acquiescence is accorded to the defendant due to the plaintiff's late filing of the notice of application for summary judgment;

(iii) the purported "prior agreement" between parties for the matter/merits of the case to be fully ventilated and determined at the full trial but not summarily;

(iv) the alleged lawful and rightful occupation of the land by the defendant;

(v) a party ie, RAC possessed the ownership interest to the land;

(vi) the defendant purportedly had occupied and permitted on the land since July 2014 rooted on the representation of Railway Assets Corporation;

(vii) the defendant challenged and disputed the alienation of the land;

(viii) there is no cause of action by the plaintiff to move this proceeding against RAC, notwithstanding:

(ix) Railway Assets Corporation is the rightful owner (which is vehemently denied and not admitted by the plaintiff) to the land; and

(x) threads of evidence in various statement of accounts/invoices/payment vouchers on the payment of rents as sighted at paras. 9 and 12 of exh. "ARM-1" and exh. "ARM-6" of the defendant's affidavit in reply.

[17] The plaintiff submitted that application for summary judgment was filed within reasonable time. Therefore, the application will not prejudice the defendant in whatsoever nature because the plaintiff has valid, suitable and cogent grounds on merits applying for the same before this Honourable Court.

[18] In response to the contention raised by the defendant that there is prior agreement between parties to estop the matter from being tried summarily, the plaintiff submitted that there was no prior agreement, oral or written, between the parties.

[19] Next, the defendant alleged that since the parties agreed that the plaintiff's approval letter for mixed development dated 26 May 2017 (see exh. KKC-4, P-AIS) would be placed under Part B wherein the contents are subject to cross-examination and dispute, the matter is now being estopped from being tried summarily. Instead, it should be ventilated at full trial.

[20] In response to that, the plaintiff submitted that there was no prior agreement, oral or written, between the parties for the matter to be resolved at full trial. Plaintiff submitted that the classification of the document is a mere compliance with the pre-trial directions.

[21] The defendant's main contention in this case is that there is a consent and acquiescence given to the defendant. To support this, the defendant referred to the letter dated 21 July 2014 from RAC whereby RAC had approved and agreed to rent the land to the defendant from 1 September 2014 to 31 August 2017 [see, D-AIR exh. ARM-1].

[22] It can further be observed that the terms of the agreement, *inter alia*, cl. I(v), the defendant was entitled to erect temporary structures with the approval of RAC and Pihak Berkuasa Tempatan. Subsequent to the agreement, the defendant had been paying rental to RAC, a payment of RM37,000 from 5 May 2015 to 1 December 2015 (see D-AIR, exh. ARM-1).

[23] Furthermore, the defendant submitted that even if the plaintiff contends that the tenancy had ended after 31 August 2017, there is evidence of transactions, consent, and acquiescence from RAC and Ministry of Transport. To support this, the defendant refers to the case of *Norimah Mohamed & Ors v. Bukit Lenang Development Sdn Bhd & Other Appeals* [2000] 3 CLJ 133 where the Court of Appeal held at p. 134:

> The appellants, whatever their legal position may be before 1994, appear *ex facie* to have entered into a transaction with the respondent's predecessor in title ... since the respondent had taken title with express knowledge, the appellants might be able to argue that the respondent is equally bound by any contract that may have been entered between the appellants and Oakfield.

[24] Therefore, by virtue of the tenancy agreement and the payment made by the defendant to RAC and also the consent and acquiescence given to the defendant, the defendant submitted that they occupied the land legally.

[25] In response to that, the plaintiff submitted that even if the tenancy agreement exists, it is only valid for three years from 1 September 2014 until 31 August 2017. It was further submitted that the defendant had at all material times, admitted that RAC had demanded defendant to yield up the vacant possession of the land due to non-payment of the outstanding rental amounting to RM100,000 to RAC.

[26] Furthermore, the defendant submitted that despite the plaintiff being a registered proprietor of the land, the plaintiff had only been given a qualified title to the land, which is still subject to final approval and can be revoked by virtue of s. 78(3) of the National Land Code, even if the premium had been paid. The defendant referred to the Federal Court decision in the case of *North East Plantations Sdn Bhd lwn. Pentadbir Tanah Daerah Dungun & Satu Lagi* [2011] 4 CLJ 729; [2018] Supp MLJ 293 at p. 296 where:

> (3) The High Court judge had made the right decision when he decided that there was no provision in the NLC that prevented the State Authority from reviewing his earlier decision ...
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> (4) The decision of the High Court judge stating that the approval granted to the appellant did not give any legitimate expectation because when the revocation was made the said land was still a government land and no registered title was granted to the appellant was accurate and proper.
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> (6) As long as the registration was not implemented, the land was still owned by the state government. Hence, the state government was entitled to do any business including granting ownership to another party.
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> (7) Based on the grounds and authorities that had been submitted in the present appeal, the answer to the first question was in the 'affirmative'. In other words, the State Authority was authorised by the NLC to revoke the prior approval based on s. 78(3) of the NLC.

[27] On another issue, the defendant submitted that the plaintiff's prayer for declaratory reliefs that the defendant demolishes all structures that had been illegally erected couched in the form of mandatory injunctions. The defendant further submitted that to be entitled for a mandatory order, the plaintiff must show an unusually strong case, rather than a good arguable case which only applicable for restraining or prohibitory order. The defendant referred to the case of *Sivaperuman v. Heah Seok Yeok Realty Sdn Bhd* [1978] 1 LNS 184; [1979] 1 MLJ 150 at (d)-(e) whereby the Federal Court held:

> (1) the interlocutory injunction although couched in prohibitory terms was in effect a mandatory injunction in substance and effect;
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> (2) an interim or interlocutory mandatory injunction would never be granted before trial save in exceptional and extremely rare cases ...

[28] Moreover, the defendant submitted that with the existence of documentary evidence showing that the defendant occupying the land legally, and this has not been rebutted by the plaintiff, therefore this case is not a suitable case to be disposed summarily as there is a need for the court to hear further into the evidence by way of a full trial.

[29] Despite the contention raised by the defendant that the plaintiff should have included RAC as a party to this suit, the plaintiff submitted that plaintiff have no cause of action to move this proceeding against RAC. The plaintiff relied on the doctrine of the privity of contract and further submitted that exhs. ARM-1 and ARM-6 are not binding on the plaintiff and the rights and obligation that arises from the contract cannot be imposed upon the plaintiff who is not a party to the contract.

Findings And Decision Of The Court

[30] Having appraised the facts adduced by both the parties through affidavits and the exhibits, and having considered the submissions by learned counsels for both sides, I find that the plaintiff has shown the court that the defendant has no defence to its claim and thus summary judgment can be entered pending the assessment of damages. My decision is based on the following findings.

Principles Of Law To Summary Judgment Application

[31] Order 14 r. 1 of the Rules of Court 2012 provides as follows:

> Application by plaintiff for summary judgment:
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> (1) Where in an action to which this rule applies a statement of claim has been served on a defendant and that defendant has entered an appearance in the action, the plaintiff may, on the ground that the defendant has no defence to a claim included in the writ, or to a particular part of such a claim, or has no defence to such a claim or part thereof except as to the amount of any damages claimed, apply to the Court for judgment against the defendant.

[32] In *Samlem Trading Sdn Bhd v. Welley Timber Industries Sdn Bhd & Ors* [2020] 1 LNS 1811 at para. 7, the court considered O. 14, as follows: A

> Principles governing summary judgment
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> The principles governing an application for summary judgment under O. 14 Rules of Court 2012 are trite. The jurisdiction is to be exercised only in very clear cases, the burden is on the plaintiff to satisfy the court by affidavit evidence that the defendant plainly and obviously has no defence to the plaintiff's claim and the affidavit in support must be affirmed by someone who is able to verify the facts relied on to obtain the relief. Once the preceding conditions are satisfied the burden shifts on the defendant to demonstrate that there is a fairly arguable defence to the claim, or that there exists serious conflict of material facts, or that there is a triable issue to be determined at the trial, or that there is an important and difficult point of law requiring further and mature consideration at the trial. (see *Malayan Insurance (M) Sdn Bhd v. Asia Hotel Sdn Bhd* [1987] 1 CLJ 246; *Abdul Rahim Abdul Hamid & Ors v. Perdana Merchant Bankers Bhd & Ors* [2000] 2 CLJ 457). B C D

[33] The Supreme Court in *Bank Negara Malaysia v. Mohd Ismail Ali Johor & Ors* [1992] 1 CLJ 627; [1992] 1 CLJ (Rep) 14 established that the duty of a judge does not end the moment a fact is asserted by one party and denied or disputed by the other in an affidavit. The principle is stated as follows at p. 19(g): E

> ... Where such assertion, denial or dispute is equivocal or lacking in precision or is inconsistent with undisputed contemporary documents or other statements by the same deponent or is inherently improbable in itself, then the Judge has a duty to reject such assertion or denial. Thereby rendering the issue as not triable. In our opinion, unless this principle is adhered to, a Judge is in no position to exercise his discretion judicially under an O. 14 application. Thus, apart from identifying the issues of fact or law, the Court must go one step further and determine whether they are triable. This principle is sometimes expressed by the statement that a complete defence need not be shown. The defence set up need only show that there is a triable issue. F G

[34] This court finds that O. 14 of the Rules of Court 2012 is not limited in power to declaratory reliefs. In *Fadzil Mohamed Noor v. Universiti Teknologi Malaysia* [1981] 1 LNS 214; [1981] 2 MLJ 196, the Federal Court allowed an appeal for a declaration of a dismissal to be *ultra vires*, illegal, and void. H

[35] In *Fadzil*, the appellant, who was an assistant lecturer in the Universiti Teknologi Malaysia applied for leave to contest the elections in the General Election. The appellant filed a specially indorsed writ for a declaration that the purported dismissal by the respondents was *ultra vires*, illegal and void. He then applied for summary judgment. This application was dismissed by the High Court and he appealed to the Federal Court. The Federal Court then took the stand that if a point taken is quite obviously an unarguable point, the court has duty under O. 14 to apply the rule. I

[36] This court finds the case *Bijak Utama Sdn Bhd v. Adwin Sdn Bhd* [1997] 1 LNS 314; [1997] MLJU 119 of great assistance in deciding whether a declaratory relief can be granted by way of summary judgment:

> The first question which I had to determine is whether a party to a suit can apply under an O. 14 application for a declaratory judgment without the matter going for a full trial. Generally an O. 14 application is only suitable for a liquidated claim but there have been a number of instances where the Courts have given declaratory judgments under such an application. In *Avel Consultants Sdn Bhd & Anor v. Mohamed Zain Yusof & Ors* [1985] 2 MLJ 209 the first and second respondents, who were directors in two companies called Elmec and Avel, i.e., the appellants, and the latter company being the subsidiary of the first, and the third respondent, who was a director of Elmec, formed a firm with the object of carrying on business as consultant engineers, the same as that of the appellant companies. The firm canvassed for work and were appointed to carry on work in place of the appellants. The appellants sued the respondents for breach of fiduciary duties and after the defence was filed, they took out a summons to enter judgment in their favour praying, *inter alia*, that the respondents be declared that they were trustees for Elmec and Avel in respect of all professional charges received by them and/or their firm. George J who heard the summons refused the application and hence this appeal. ...
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> The above case would lend support to the submission of counsel for the plaintiff that an O. 14 application can be employed in an action for declaration where the case is clear. In European *Asian Bank AG v. Punjab and Sind Bank* [1983] 2 All ER 508. Robert Goff LJ at page 516 said:
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> > Moreover, at least since *Cow v. Casey* [1949] 1 All ER 197; [1949] 1 KB 474, this court has made it plain that it will not hesitate, in an appropriate case, to decide questions of law under Ord 14, even if the question of law is at first blush of some complexity and therefore takes 'a little longer to understand'. It may offend against the whole purpose of O. 14 not to decide a case which raises a clear-cut issue, when full argument has been addressed to the court, and the only result of not deciding it will be that the case will go for trial and the argument will be rehearsed all over again before a judge, with the possibility of yet another appeal (see *Verral v. Great Yarmouth BC* [1980] 1 All ER 839 at 845-846; [1981] 1 QB 202 at 215218, per Lord Denning MR and Roskill LJ). The policy of Ord 14 is to prevent delay in cases where there is no defence;
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> In *Ponniah v. Sivalingam & Ors* [1991] 3 MLJ 190, *vide* an O. 14 application, the plaintiff sought a declaration, *inter alia*, that the shares, the subject matter of the suit, were held by the defendants on trust for him. Zakaria Yatim J (as he then was) held that as the defendants have no defence to the plaintiff's claim, the court can enter summary judgment in terms of the prayers sought although they are for a declaration. In *Fabrique Ebel Societe Anonyme v. Syarikat Perniagaan Tukang Jam City Port & Ors* [1988] 1 MLJ 188 the same Judge said (at page 189):

> It is clear that the court has jurisdiction to enter summary judgment under O. 14 of the Rules of the High Court for an injunction. In *Shell-Mex and BP Ltd v. Manchester Garages Ltd**, Lord Denning MR, "I see no reason whatever why a plaintiff cannot go straight to the judge and ask for summary judgment under RSC O. 14 for an injunction. ... The plaintiffs were quite entitled to go under RSC O. 14 to the judge for an injunction." (*[1971] 1 All ER 841, at 842-845).
>
> Having satisfied myself that the court can enter summary judgment under O. 14 for a declaration and for an injunction I went on to deal with the next issue.

[37] Relying on the authorities of *Fadzil* (*supra*) and *Bijak Utama* (*supra*), I find that the power of this court is not limited to granting a summary judgment for liquidated claims matters only. It also extends to any claims for a declaratory relief. It is trite law that the ingredients for O. 14 are, firstly, the claim must be filed through a writ, and secondly, the court must be satisfied that there are no triable issues, and that the plaintiff's claim is obvious and clear-cut. As it has been decided in *European Asian Bank* case cited in *Bijak Utama* above, it offends the principle of summary judgment if a relief is not granted merely because it takes some time to sort out and understand its issues. If the defence provided nothing worthy of trial, a summary judgment should be granted.

[38] This principle also extends to matters concerning land. I find support in the case of *Salleh Hussein v. Punca Klasik Sdn Bhd & Anor* [1997] 1 LNS 392; [1997] MLJU 159 where the court was faced with a summary application for a counterclaim declaration that the defendant was the registered proprietor of the land in dispute. The court held that the land was clearly registered to the defendant and the defendant had obtained an indefeasible title. Thus, the defendant was entitled to a summary judgment to declare themselves as the rightful registered proprietor.

[39] The Court of Appeal in the case of *Abdullah Rohani v. Punca Klasik Sdn Bhd* [2004] 1 CLJ 773; [2004] MLJU 754 also gave no resistance or contrary decision as to a summary judgment application in a matter concerning land disputes. The issue raised was whether the defendant occupied and trespassed the land without permission of the owner. The appellant surmised that the appellant's father had "bought" the portion of the land, where the purchase price had been paid in full. The respondent, in what was a proceeding for vacant possession, claimed possession of the land. However, the respondent did not refute the existence of the sales and purchase agreement as claimed by the appellant. The Court of Appeal did not denounce the practise of summary judgment for matters concerning land dispute. On the contrary, the

Court of Appeal acknowledged the summary judgment application and went on to discuss the merit of the appeal. It then upheld the High Court's dismissal of the summary judgment application on the reason that there were triable issues.

[40] Therefore, on the authorities of the *Salleh Hussein v. Punca Klasik Sdn Bhd & Anor* [1997] 1 LNS 392; [1997] MLJU 159 and *Abdullah Rohani v. Punca Klasik Sdn Bhd* [2004] 1 CLJ 773; [2004] MLJU 754, above, I find that a dispute on land matters can be heard and decided summarily.

Principles Of Law In Regard To Indefeasibility Of Title

[41] Section 5 of the National Land Code provides the interpretation and guidance as to the meaning of "Proprietor".

> Proprietor means any person or body for the time being registered as the proprietor of any alienated land.

[42] Section 340 of the National Land Code provides:

> Indefeasibility of Title and Interest – Registration to confer indefeasible title or interest, except in certain circumstances
>
> (1) The title or interest of any person or body for the time being registered as proprietor of any land, or in whose name any lease, charge or easement is for the time being registered, shall, subject to the following provisions of this section, be indefeasible.
>
> (2) The title or interest of any such person or body shall not be indefeasible:
>
> (a) in any case of fraud or misrepresentation to which the person or body, or any agent of the person or body, was a party or privy; or
>
> (b) where registration was obtained by forgery, or by means of an insufficient or void instrument; or
>
> (c) where the title or interest was unlawfully acquired by the person or body in the purported exercise of any power or authority conferred by any written law.
>
> (3) Where the title or interest of any person or body is defeasible by reason of any of the circumstances specified in sub-section (2):
>
> (a) it shall be liable to be set aside in the hands of any person or body to whom it may subsequently be transferred; and
>
> (b) any interest subsequently granted thereout shall be liable to be set aside in the hands of any person or body in whom it is for the time being vested:
>
> Provided that nothing in this sub-section shall affect any title or interest acquired by any purchaser in good faith and for valuable consideration, or by any person or body claiming through or under such a purchaser.

(4) Nothing in this section shall prejudice or prevent:

(a) the exercise in respect of any land or interest of any power of forfeiture or sale conferred by this Act or any other written law for the time being in force, or any power of avoidance conferred by any such law; or

(b) the determination of any title or interest by operation of law.

[43] Section 341 of the National Land Code provides that adverse possession not to extinguish titles or interests:

> Adverse possession of land for any length of time whatsoever **shall not constitute a bar to the bringing of any action for the recovery thereof** by the proprietor or any person or body entitled to an interest therein and accordingly, the Limitation Act 1953, **shall in no circumstances operate to extinguish any title to, or interest in, land**. (emphasis added)

[44] In the case of *Teh Bee v. K Maruthamuthu* [1977] 1 LNS 134, the Federal Court held (at the last three paragraphs of the judgment):

> There is also another much more important reason why this appeal should be allowed. Under the Torrens System the register is everything. So said SK Das on page 102 of his book on the Torrens System in Malaya. I need only refer to two Privy Council cases, *Creelmon & Anor. v. Hudson Bay Insurance Co.* (1920) AC 194 and *Alan Frederic Frazer v. Douglas Hamilton Walker* (1967) AC 569 which decided to the same effect.
>
> In *Creelmon & Anor. v. Hudson Bay Insurance Co.* (*supra*) which was an appeal from British Columbia, Lord Buckmaster delivering the judgment of the Judicial Committee said on page 197:
>
> > Their Lordships are unable to accede to either of these propositions. In their opinion the certificate of title referred to in s. 22 of the Land Registry Act is a certificate which, while it remains unaltered or unchallenged upon the register, is one which every purchaser is bound to accept. And to enable an investigation to take place as to the right of the person to appear upon the register when he holds the certificate which is the evidence of his title, would be to defeat the very purpose and object of the statute of registration.
>
> In *Alan Frederic Frazer v. Douglas Hamilton Walker* (*supra*) which was an appeal from New Zealand, Lord Wilberforce said on page 580:
>
> > it is fact the registration and not its antecedents which vests and divests title.

[45] The effect of registration, issuance of title documents and indefeasibility of title are best discussed by Abdul Malik Ishak J (as he then was) in *Cahaya Ideal (M) Sdn Bhd v. Orang-Orang Yang Mengenali Diri Sebagai 'Ponga'& Ors* [1999] 3 CLJ 257 at pp. 277(g) to 279(c):

Indefeasibility

The property has since been transferred and registered in the name of the plaintiff. In accepting the transfer of the property, the plaintiff holds it subject to "other registered interest" as envisaged in s. 215(3)(a) of the NLC. Once the plaintiff became registered as the proprietor of the property, the title became indefeasible under s. 340 of the NLC and the plaintiff has a title which was free of all adverse claims or encumbrances not noted on the register (*Punca Klasik Sdn. Bhd. v. Liza James & Ors.* [1996] 3 CLJ 932). Lord Diplock in *T Damodaran v. Choe Kuan Hin* [1979] 1 LNS 107, [1979] 2 MLJ 267, PC held that the only exceptions to the principle of indefeasibility would be in situations where there were fraud, misrepresentation, forgery or an *ultra vires* acquisition to have been made under statutory authority.

In my judgment, none of these exceptions apply to the present case. The court in *Majlis Amanah Rakyat (Mara) v. Tam Seek Hong & Ors.* [1994] 3 CLJ 64:

> Under our Torrens System the register is everything. Upon registration, the party in whose favour the registration has been effected will obtain an indefeasible title to or interest in the land (s. 340(1) of the National Land Code), that is, a title or an interest which is free of all adverse claims or encumbrances not noted on the register. I might as well mention that registration under the National Land Code is effected when a prescribed memorial of the dealing is made on the register document of title under the hand and seal of the registering authority (*Mohammad bin Buyong v. Pemungut Hasil Tanah, Gombak & Ors* [1982] 2 MLJ 53).

and clearly the plaintiff here was entitled to hold the property free from all adverse claims or encumbrances not stated on the register document of title. Since the alleged interest of the defendants was neither endorsed nor registered on the register document of title nor protected by any caveat, the plaintiff was not bound by the said alleged interest as claimed by the defendants.

Raja Azlan Shah CJ Malaya (as His Majesty then was) in *PJTV Denson (M) Sdn Bhd v. Roxy (M) Sdn Bhd* [1980] 1 LNS 55, [1980] 2 MLJ 136 aptly said that "the concept of indefeasibility of title is so deeply embedded in our land law that it seems almost trite to restate it." The plenitude of authorities found in the law journals described the word "indefeasibility" in a number of ways. Some described it as "conclusive", "unimpeachable", while others described it as "unexaminable", and "state guaranteed". Perhaps the best description of the word "indefeasibility" comes from the case of *Frazer v. Walker And Others* [1967] 1 All ER 649 at p. 652 where Lord Wilberforce described it as:

> .. a convenient description of the immunity from attack by adverse claim to the land or interest in respect of which he is registered, which a registered proprietor enjoys. This conception is central in the system of registration. It does not involve that the registered

> proprietor is protected against any claim whatsoever; as will be seen later, there are provisions by which the entry on which he relies may be cancelled or corrected, or he may be exposed to claims *in personam*. These are matters not to be overlooked when a total description of his rights is required; but as registered proprietor, and while he remains such, no adverse claim (except as specifically admitted) may be brought against him.

Indefeasibility would be achieved by registering the instrument of dealing in statutory form duly executed, attested and determined by the Registrar. Under the Torrens system, title is obtained not from the execution of the statutory instrument but rather by way of registration. Once the instrument is registered, title would then pass. I will now proceed to examine the facts in *Frazer v. Walker and Others* (*supra*). In that case, a husband and wife were registered proprietors of farm land which was subject to a mortgage. The wife sought to obtain a larger sum by way of a loan so as to discharge the existing mortgage and for this purpose she entered into a new and first mortgage with the second lender. She did not tell the husband about her plan and she conveniently forged his signature on the mortgage. The discharge and the new mortgage were registered. Unfortunately, no interest was paid under the loan and the mortgagee sold the land to the purchaser who then registered the transfer. The husband later discovered, to his dismay, what had happened and he was unable to set aside the registration because:

> ... registration ... confers upon a registered proprietor a title to the interest in respect of which he is registered which is immune from adverse claims, other than those specifically excepted. In doing so they wish to make clear that this principle in no way denies the right of a plaintiff to bring against a registered proprietor a claim *in personam*, founded in law or in equity, for such relief as a court acting *in personam* may grant.

Issues Of The Case

[46] Briefly, there are three main issues in this case:

(i) the alienation and proprietorship of the land;

(ii) issue regarding qualified title; and

(iii) the tenancy agreement and the position of the parties.

[47] I shall deal with these three issues separately before coming to my conclusions and decisions.

Alienation And Proprietorship

[48] In challenging the summary judgment application by the plaintiff, the defendant has questioned the capability of the plaintiff in paying the RM20,098,855 premium. They also discounted the actual payment of it and thus challenged the plaintiff's proprietorship in the land.

[49] At this juncture, it is apt to discuss the process and procedure of alienation of lands under the NLC. The following passage of the Court of Appeal in the case of *Pembinaan Batu Jaya Sdn Bhd v. Pengarah Tanah Dan Galian, Selangor & Anor* [2016] 5 CLJ 250 at p. 268 could shed light on this:

> [33] Section 40 of the NLC declares that the SA is vested with power over the State land within the State. The ensuing sections in the NLC outline the manner as to how the SA is to alienate the State land. There are set parameters to be followed before an alienation is legally complete in favour of the person in whose name the land has been alienated. Already, the power to alienate which is expressly stipulated in the NLC is regulated within the regime of the NLC. Meaning, the SA cannot alienate State land to just anybody, arbitrarily. Once it decides to alienate a State land, the provisions of ss. 76 and 78 of the NLC are triggered and must be complied with.

[50] Section 42 of the NLC empowers the State Government to alienate State land to whomever it intends:

> (1) Subject to sub-section (2), the State Authority shall have power under this Act:
>
> (a) to alienate State land in accordance with the provisions of section 76 ...

[51] If a plot of land has been identified and alienated to any party, then the provisions of s. 76 of the NLC will apply. Section 76 says:

> The alienation of State land under this Act shall consist of its disposal by the State Authority:
>
> (a) for a term not exceeding ninety-nine years;
>
> (aa) in perpetuity:
>
> (i) where the Federal Government requires the State Authority to cause a grant in perpetuity to be made to the Federal Government or to a public authority or where the Federal Government and the Government of the state agree to make a grant in perpetuity to the Federal Government;
>
> (ii) where the State Authority is satisfied that the land is to be used for a public purpose; or
>
> (iii) where the State Authority is satisfied that there are special circumstances which render it appropriate to do so;
>
> (b) in consideration of the payment of an annual rent;
>
> (c) in consideration, unless the State Authority thinks fit to exempt therefrom in any particular case, of the payment of a premium;
>
> (d) subject, unless the State Authority otherwise directs pursuant to sub-section (5) of section 52, to a category of land use determined in accordance with sub-sections (2) and (3) of that section; and

(e) subject to such conditions and restrictions in interest as may be imposed by the State Authority under, or are applicable thereto by virtue of, any provision of this Act.

Provided that nothing in paragraph (aa) shall enable the State Authority to dispose of any part of the foreshore or sea-bed for a period exceeding ninety-nine years; and paragraph (d) shall not apply to the alienation of land under this Act in pursuance of an approval given by the State Authority before the commencement thereof.

[52] The alienation will only be completed when there is an entry in the RDT as provided by the doctrine that registration is everything under the Torrens system. In fact, s. 89 of the NLC has made it clear that such entry is a "conclusive evidence" when it says:

Every register document of title duly registered under this Chapter shall, subject to the provisions of this Act, be conclusive evidence:

(a) that title to the land described therein is vested in the person or body for the time being named therein as proprietor; and

(b) of the conditions, restrictions in interest and other provisions subject to which the land is for the time being held by that person or body, so far as the same are required by any provision of this Act to be specified or referred to in that document.

[53] An alienation is not final but it has to go through a process and procedure. As long as the process and procedure are not perfected, it cannot be said to have been alienated completely. The State Government is not contractually bound to continue the alienation as long as it is not completed. The power to alienate also carries with it the power to revoke if the alienation is not yet perfected. This is a power that can be inferred from the power of alienation itself.

[54] However, the power to alienate land is limited to land belonging to the State Government and not land that has been alienated to other parties. The alienation of privately owned land (ie, non-State land) cannot be made unless the land acquisition process has been properly conducted. Article 13 of the Federal Constitution stipulates that after a piece of land is alienated, the ownership cannot be taken back except through an acquisition process. Article 13 provides that:

(1) No person shall be deprived of property save in accordance with law.

(2) No law shall provide for the compulsory acquisition or use of property without adequate compensation

[55] Also, an alienated land which has previously been forfeited due to the breach in any conditions imposed can subsequently be re-alienated. The power to forfeit any alienated land due to a breach of condition is as provided under s. 127 of the NLC. Section 127 says:

> (1) Upon any breach arising of any condition to which any alienated land is for the time being subject:
>
> (a) the land shall become liable to forfeiture to the State Authority; ...
>
> (3) Land which has become liable to forfeiture under this section for breach of any condition shall cease to be so liable if:
>
> (a) the breach is subsequently remedied.

[56] From the facts adduced through the affidavits of the parties, it appears that on 26 May 2016, the ODLM on behalf of the JKKT WPKL was carrying out their duty, as the State Authority has approved the application to alienate the land to the plaintiff.

[57] Thus, the process and procedure laid down in the NLC are triggered therefrom. As in the usual alienation process, upon acceptance of the alienation, the plaintiff has to pay the premium officially stated in Form 5A under the NLC; in this case, within three months. Form 5A has stated RM20,098,855 as the premium. The plaintiff duly paid the premium *via* a banker's cheque dated 22 August 2017. In due course, the ODLM issued the official receipt dated 23 August 2017. Thereupon, the plaintiff has been registered as the registered proprietor of the land on 23 October 2017. This is clearly confirmed in both the RDT (as shown in the title search report dated 7 November 2017) and also the IDT issued.

[58] The land has been issued with the following conditions and restrictions:

> Syarat Nyata:
>
> Tanah ini hendaklah digunakan hanya untuk tujuan tapak Perumahan Rakyat 1 Malaysia (PRIMA) dan pembangunan bercampur sahaja.
>
> Sekatan Kepentingan:
>
> Tanah ini tidak boleh dipindahmilik, dipajak atau digadai tanpa kebenaran Jawatankuasa Kerja Tanah Wilayah Persekutuan Kuala Lumpur.

[59] Also, as a norm, the title is given as a qualified title pending the finalisation of the land border and its measurement. This can be seen in Form 11Ae and Form B2e issued in due course under the NLC. Paragraph 2 of Form 11Ae has stated that:

> 2. Dalam pelan tanah dalam Borang B2e, sempadan-sempadan yang ditunjukkan dengan warna merah, belum ditetapkan secara ukur, adalah sementara sahaja.

[60] Likewise, in para. 2 of Form B2Ae, it has been stated that:

> 2. Dalam pelan di bawah ini, sempadan-sempadan yang ditunjukkan dengan warna merah, belum ditetapkan secara ukur, adalah sementara sahaja.

[61] It is thus clear that the land has been properly and officially alienated to the plaintiff. As mentioned earlier, it is trite law that with the proprietorship comes the indefeasible title.

[62] Hence, as a registered proprietor of the land, the plaintiff has the absolute right to enjoy and deal with the land.

[63] That is what the plaintiff in our present case intends to do. It intends to construct a mixed development for the Perumahan Rakyat 1 Malaysia (PR1MA) project on the land. This is also in line with the condition imposed in the title document.

[64] To cast an issue with this, the defendant tried to question about the payment of the premium of RM20,098,855. Through the affidavit in reply (encl. 21), affirmed by Datuk Abd Razak bin Muhamad on 30 December 2020 on behalf of the defendant, it was alleged that the annual returns lodged by the defendant with the Suruhanjaya Syarikat Malaysia ('SSM') does not indicate any such expenses. As such, the defendant challenged the validity of this alienation. The defendant also questioned the ability of a small company like the plaintiff in paying such a huge sum of premium.

[65] With respect, this argument is flawed. What is clear from encl. 20 and the exhibits therewith is that, there was such a banker's cheque to the land administrator bearing RM20,098,855 (namely the premium) and therefrom the official receipt was issued by the ODLM acknowledging receiving the same. Also, the subsequent entry of the name of the plaintiff on the register title of document and the issuance of the issued document of title to the plaintiff has all sealed the proprietorship of the plaintiff in the land. To suggest that there could not be any such payment and thus questioning the ownership of the plaintiff over the land is an uphill task. The burden is on the defendant to dispute this solid fact. This the defendant has failed. Nothing has been adduced by the defendant for this. Mere allegation is but a futile act here.

Qualified Title

[66] The defendant then attempted to attack the proprietorship and the right of the plaintiff by highlighting the fact that the title is still a qualified title. They alleged that since it is a qualified title, the proprietorship is not final. It can still be revolved and re-alienated to others.

[67] With respect, this is again misplaced. A qualified title is 'qualified' and not final only in respect of the boundary, border and the measurement. The proprietorship to a qualified title is never an issue.

[68] When a land is held under a qualified title, this only means that the boundaries of the land are provisional; as the boundaries have not been surveyed and finalised. This is expressly provided in s. 176(2) of the NLC which states:

> (2) Qualified title shall confer on the proprietor the like rights in every respect as those conferred (as mentioned in section 92) by final title, save that:
>
> (a) the boundaries of the land shown on the document of title thereto shall be provisional only except so far as any of them may have been established by any earlier survey ...

[69] After the boundaries of a land held under a qualified title have been properly surveyed by the Department of Survey and Mapping, a final title will be issued pursuant to s. 189 of the NLC. Section 189 of the NLC says:

> Conversion to take place after survey
>
> 189. Where any land held under qualified title has been duly surveyed in accordance with section 396, final title may be issued in continuation of the qualified title in accordance with the following provisions of this Chapter.

[70] The case of *Leong Ah Kew & Anor v. Yong Chang Industries Sdn Bhd & Ors And Another Case* [2019] 1 LNS 1288; [2019] MLJU 988 although not directly related to the facts of our case here, could provide a good illustration regarding the differences between a qualified title and a final title. There, the plaintiff had sued the defendant for trespass. Both the plaintiff's land and the defendant's land were adjacent to each other and two of the defendant's buildings had encroached onto the plaintiff's.

[71] The plaintiff's land in that case had been issued with a final title. Whereas, the defendant's land had been issued with a qualified title. One of the main issues that the learned judge had to consider was the legal effect of a final title vs a qualified title. The High Court Judge held that the defendant's two buildings had indeed trespassed onto the plaintiff's land. In arriving at her decision, the High Court Judge held that:

(i) As the defendant's land was based on a qualified title, there was no finality in the land boundary: as no final measurement of the land had been taken.

(ii) The marking of the boundaries of the plaintiff's land was to be accepted as it had been issued with a final title as opposed to the defendant's land, which had only been issued a qualified title.

[72] At para. 26 of the judgment, the judge held that: A

> This would therefore mean the plaintiff could rely on PA 121707 as it was based on a final title and the defendant could not rely on PA 128013 which was based on a qualified title.

[73] A qualified title issued under the NLC confers on the proprietor the same rights as those conferred by a final title. This was the decision of the Federal Court in the case of *Yap Lai Yoke v. Chin Fook Wah & Another Case* [1984] 2 CLJ 282; [1984] 1 CLJ (Rep) 452, where our Federal Court held at p. 456: B

> Persons with qualified titles are entitled to protection just as any other title holders. Adverse possession by a person nor does it any way further his right to possession. Merely erecting permanent structure by extension of building and unlawfully on the land is not sufficient to create any right against the rightful owner protected by title. C

[74] Furthermore, this court in the case of *Izham Shafie lwn. Ahmad Hassan* [2020] 1 LNS 2229 referred to the aforementioned decision in the case of *Lai Yoke* and held: D

> Kenyataan ini jelas selaras dengan peruntukan yang terdapat dalam seksyen 176(2) KTN yang memberikan hak yang sama kepada hakmilik sementara sepertimana hakmilik muktamad kecuali tanah yang dipegang di bawah hakmilik sementara iaitu tidak boleh dipecah bahagian atau disatukan. Seksyen 176(2) KTN menyebut: E
>
> > (2) Hakmilik sementara hendaklah memberi kepada tuanpunya hak-hak yang serupa dalam tiap-tiap segi seperti hak-hak yang diberi (seperti yang disebutkan dalam seksyen 92) oleh hakmilik muktamad, kecuali bahawa: F
> >
> > (a) sempadan-sempadan tanah yang ditunjukkan di atas dokumen hakmilik kepadanya hendaklah buat sementara sahaja kecuali setakat mana mana-mana dari sempadan itu telah ditentukan dengan pengukuran yang lebih awal, dan
> >
> > (b) melainkan sebaliknya diperuntukkan di bawah Akta ini, tanah itu tidaklah berupaya dipecah-sempadankan atau dipecahbahagi, atau dimasukkan dalam mana-mana penyatuan, dan tidak juga mana-mana bangunan di atasnya berupaya dipecah-sempadankan. G
>
> Oleh itu, dalam hal ini Perayu/Defendan tidak boleh menerima pakai hanya sebahagian daripada kenyataan dalam keputusan kes tersebut dan tidak keseluruhannya. Hakmilik Sementara yang diberikan kepada Responden/Plaintif mempunyai kesan yang sama dari segi haknya kecuali yang dinyatakan selainnya dalam seksyen tersebut. H

I

[75] This supports the discussion on s. 176(2) above. Thus, just because a party is only a registered proprietor of a qualified title, it does not mean that he/she has defeasible title. The title can only be defeasible subject to s. 340(2) of the NLC.

[76] None of these happened here. What happened in this case is only that the title is a qualified title. If the defendant's line of argument on qualified title is to be accepted by this court, then, those many qualified title landowners in entire Malaysia will have sleepless nights for the fear of losing their lands. This is not the principle of land law under the NLC nor the Torrens system. Under the NLC or the Torrens system, registration is everything. Once the proprietorship has been registered (as in our present case), it will only be defeasible if it can be proven that any of the grounds stated in s. 340(2) occurs.

[77] The Federal Court case of *North East* (*supra*) relied upon by the defendant can easily be distinguished from our present case. In *North East*, the title had yet to be issued. Also, the premium payment made by the appellant was refused by the State Executive Council upon revocation of the alienation of the land in issue to the appellant. Hence, in *North East*, the alienation was never perfected. Not surprisingly, the Federal Court decided that the revocation of the alienation to the appellant was valid.

[78] In our present case, the alienation has been perfected. The premium payment by the plaintiff was duly accepted by the ODLM with official receipt. Thereupon, the name of the plaintiff was registered as proprietor in the RDT and the proper document of title (namely, the IDT) was issued to the plaintiff. Also, there has never been any attempt or letter by the ODLM or the JKKT WPKL (the State Authority for Federal Territory Kuala Lumpur) to revoke or cancel or even to forfeit this title. Hence, the solid conclusive evidence of the plaintiff's proprietorship in the land is undoubtable. With such proprietorship comes the indefeasibility regardless whether this is a qualified or final title.

[79] This is as explained by the court in the case of *Ali Hamid & Others v. Abdul Malik Ahmad* [2020] MLJU 884, where the court held that:

> [11] The qualified title which the plaintiff possess permits him to enjoy the rights of a registered proprietor of the land. (See s. 176 of the National Land Code 1965.) In *Yap Lai Yoke v. Chin Fook Wah* [1984] 2 MLJ 274, the land was held under qualified title. The registered proprietor had sued the owners of adjoining lots for encroachment by unlawfully building extensions to their buildings. He secured judgment in his favour and on appeal to the Federal Court, Lee Hun Hoe CJ (Borneo) delivering the judgment of the Court held (at p. 278):
>
> > A true owner can never be dispossessed of his land. The plaintiff alleges encroachment but the defence is a complete denial. The only issue before the court is therefore the question whether there

has been any encroachment or not. The question depends on the evidence that is before the court. In this case it is based on the relative strength of their titles: see *Ocean Estates Ltd v. Norman Pinder* [1969] 2 AC 19. The parties all have qualified titles. Their titles are of equal strength. Unless the defendant can show that on the basis of his title he has built within the areas given by his title he would be guilty of trespass. Once the plaintiff has established his title and encroachment by the defendants the latter must show that they have better titles than the plaintiff in respect of the areas they were alleged to have encroached. Persons with qualified titles are entitled to protection just as any other title holders. Adverse possession by a person for however long a period does not extinguish the title of the registered proprietor nor does it in any way further his right to possession. Merely erecting permanent structure by extension of building unlawfully on the land is not sufficient to create any right against the rightful owner protected by title.

[12] I am, therefore, satisfied that the learned Sessions Judge did not commit any error of fact or law when she made a finding that the plaintiff had shown that he was the registered owner of the land and that he was entitled to all protection under the National Land Code 1965 (hereinafter referred to as 'the Code') even though he was the holder of a qualified title.

[80] Therefore, the attempt by the defendant to attack the title and the right obtained by the plaintiff merely because the land is of qualified title has again failed miserably. The law and the cases are clear on this. The plaintiff as the registered proprietor has the right of enjoyment over the land effective 23 October 2017 when the name of the plaintiff has officially been entered in the RDT.

Tenancy Agreement And The Position Of The Parties

[81] It is the defendant's case that the defendant is a lawful occupier of the land due to a tenancy arrangement between the defendant and the RAC. The initial tenancy arrangement was for a period of three years between 1 September 2014 and 31 August 2017. This was stated in the letter from RAC dated 21 July 2014 ('the 2014 letter') to the defendant wherein the RAC had agreed to rent out the land to the defendant for a monthly rental of RM37,000. Thus, the defendant refused to move out of the land despite a legal notice issued by the plaintiff's solicitor and despite this action.

[82] A thorough observation of the 2014 letter would show that in it, the RAC has made it clear that the land rented out to the defendant was a railway reserve land. Railway reserve lands are lands reserved for the usage of railway construction in the country ever since before the independence of this Nation. It was previously vested under the administration of the Federal

Land Administrator under the then Railway Ordinance 1948. By virtue of s. 7(1) of the Federal Lands Commissioner Act 1957 (Act 349), all railway lands (including railway reserve lands) in Peninsular Malaysia were vested in the Federal Land Commissioner. However, in 1991, with the passing of the Railways Act 1991 (Act 463), all railway reserve lands are now under the administration of the RAC. Nonetheless, the power of the RAC being a statutory body is limited by Circular No. 5 of 2009 of the Circular of the Director General of Lands and Mines to only supervise and maintain the reserve lands. The RAC is not a public officer as per the requirement under the NLC. Thus, The RAC can lease out and rent out the land but it has no power to alienate or issue temporary occupation licence under s. 66(2) of the NLC to name a few.

(Refer: Abdul Jalil, Najah Inani and Md Dahlan, Nuarrual Hilal and Mohd Arshad, Ain Husna (2018) '*Development on Railway Reserve Land: A Preliminary Study*', In: 9th Universiti Utara Malaysia International Legal Conference 2017 (ILC 2017) The European Proceedings of Social & Behavioural Sciences, 23-24 September 2017, UUM Sintok, Kedah).

[83] Thus, it appears to me that, when the land was rented to the defendant through the 2014 letter, the land was, as stated in that letter, a railway reserve land. This was never disputed by the parties. However, much later, the land was alienated by the authorities namely, the JKKK WPKL through the ODLM to the plaintiff. Can a federal reserve land be alienated? Article 86 of the Federal Constitution has clearly provided the answer in affirmative when in continuing the discussion in art. 85 on lands reserved for federal purpose, it says:

> (1) Where any interest in land is vested in the Federation, or in public authority, for any purpose, the Federation or the public authority **may dispose of** that interest or any smaller interest in that land to any person as it deems fit.
>
> (2) Where any interest in land in a State is disposed of by or to the Federation or any public authority in pursuance of this Article or of Article 85, it shall be the duty of the Government of that State **to register the transaction** accordingly. (emphasis added)

[84] Thus, the land (although a railway reserve land initially) was subsequently alienated to the plaintiff. Referring to the laws and discussion on proprietorship and indefeasibility of title earlier, it is clear to us that effective 23 October 2017, the land is rightfully owned by the plaintiff. The plaintiff has the absolute right to use, develop or construct buildings on the land. This is what the plaintiff intends to do. After all, this is also as per the express condition stated in the RDT and IDT.

[85] The issue now arises with regard to the position of the defendant post-alienation. While it is clear that the defendant's stay in the land between 1 September 2014 and 31 August 2017 or even (as a month-to-month tenant) up till 23 October 2017 might be justifiable legally due to the 2014 letter, the stay after that is totally different. From 23 October 2017, the proprietor of the land is the plaintiff. Any stay must be with the consent of the plaintiff either as a licensee or as tenant. This is not the case here. When the plaintiff realised about the defendant's occupation of the land in 2019, the plaintiff immediately and rightfully issued the notice to vacate asking the defendant to leave.

[86] What then is the position of the tenancy? As far as the law is concerned, a tenancy must be entered into between a tenant and the owner or his agent or the lessee or the sublessee for the obvious reason that only in such situation could a licence to stay or consent to occupy and utilise the property be granted.

[87] Section 223 of NLC gives power to a proprietor to grant tenancies not exceeding three years. It is now reproduced as follows:

> Power of proprietor, lessees, etc., to grant tenancies not exceeding 3 years
>
> 223. (1) Subject to section 225 and 226, tenancies (or, as the case may be, subtenancies) for terms not exceeding three years may be granted as follows:
>
> (a) by **the proprietor of any alienated land**, in respect of the whole or any part thereof;
>
> (b) by any **lessee or sublessee** for the time being of any alienated land, in respect of the whole or any part of the land comprised in his lease or sublease;
>
> (c) by any person for the time being holding any alienated land under such tenancy or subtenancy, in respect of the whole or part of the land so held.
>
> (2) As provided by subsections 213(1) and (2), tenancies and subtenancies granted pursuant to this section shall constitute tenancies exempt from registration, and may be so granted either by word of mouth or by a written instrument in any form whatsoever. (emphasis added)

[88] There has not been any direct decision regarding this situation when a tenancy over a federal reserve land becomes an issue when it is alienated later by the Federal Government. However, I find the following cases of great assistance.

[89] In the case of *Teo Bee Ann & Anor v. Goh Say Dock & Anor* [2010] 9 CLJ 238 where the court held at pp. 247, 248 and 250:

> [20] In any event the defendants have failed to show that there was a proper succession of the equitable right or interest in respect of the shop house No. 98 flowing from the plaintiff's predecessor-in-title (Che Manis

bte Yusof) to Kassim bin Jaafar to Tee Han, to Goo Ye and finally to the 1st defendant. No grant of representation was adduced to indicate the transmissions of such equitable rights or interest. Additionally, Che Manis bte Yusof were not privy to the transactions involving the so call successors-in-title to Ng Hor Tee and no notice of any assignment of the Bill of Sale dated 2 November 1971 (at p. 3 of encl. 14) and of the agreement dated 27 April 1977 (at p. 5 of encl. 14) made between Tee Han and Goh Yee were given to Che Manis bte Yusof, the registered proprietor of the said land or to her successors-in-title. *The factual evidence also indicated that Goo Yee, Tee Han and Kassim bin Jaafar were never the registered owner of the said portion of the land, thus preventing the 1st defendant from acquiring any title or interest in that portion of the said land*.

[21] The cumulative effect of these transmissions is this: these transmissions do not bind Che Manis bte Yusof as the registered owner of the land and does not also alter the character, purport and intent of the said agreement whereby a tenancy was created to govern their relationship over that portion of the said land.

...

[28] It is trite that a licence does not create any interest and is not an interest in land. It is only a personal obligation and would not be enforceable against third parties. It is equally worthy to note that the said agreement is not registered against the title deed of the said land in the relevant land office. As such whatever licence the first defendant is claiming over the said portion of the land is void and unenforceable against the subsequent registered land owners of the said land whose title is indefeasible save for those cases where there has been fraud, misrepresentation, forgery or an *ultra vires* acquisition purporting to have been made under statutory authority. (emphasis added)

[90] It is also apt to note that this is a tenancy exempt from registration stated in s. 213 of the NLC which says:

(1) In this Act "tenancy exempt from registration" means:

(a) any tenancy or sub-tenancy for a term not exceeding three years granted pursuant to section 223; and

(b) any tenancy or sub-tenancy for a term not exceeding one year granted pursuant to the provisions of any previous land law.

(2) As provided in sub-section (2) of section 206, the provisions of sub-section (1) of that section shall not apply to the creation of, or dealings affecting, tenancies exempt from registration, and accordingly:

(a) any such transaction shall be valid whether effected in writing or by word of mouth only;

(b) where any such transaction is effected in writing, the instrument in question need not comply with the requirements of sections 207 to 212, and shall neither require, nor be capable of, registration under this Act.

(3) Notwithstanding the provisions of sub-section (2), no tenancy exempt from registration granted after the commencement of this Act shall be binding on:

(a) any person or body to whom the grantor subsequently transfers the reversion expectant thereon, or to whom he subsequently grants any lease, sub-lease, tenancy or charge, or in whose favour any lien over that reversion is subsequently created; or

(b) any person or body claiming through or under such a person or body,

unless, prior to the date on which the dealing referred to in paragraph (a) takes effect, the tenancy has become protected by an endorsement on the register document of title to the land pursuant to Chapter 7 of Part Eighteen.

(4) Where any land or lease subject to a charge or lien is transferred pursuant to an order for sale under Chapter 3 of Part Sixteen, the provisions of sub-section (3) shall have effect as supplemented by sub-section (2) of section 267 or, as the case may be, by that sub-section as applied by sub-section (3) of section 281.

(5) No tenancy exempt from registration shall be capable of being charged under this Act.

[91] In a tenancy exempt from registration, if the tenant is so concerned about his stay and his right as a tenant, he could apply to the Registrar to have his interest registered under s. 316 of the NLC. This is also as stated in the last limb of s. 213 above. Upon receiving the application, the Registrar would duly comply with the procedure laid down in s. 317 and endorse the words "exempt tenancy claimed" in the RDT. Upon such endorsement, all subsequent dealing would be subjected to this tenancy exempt from registration.

[92] The defendant did not do this. What it means is that the defendant in such situation has no recourse against the subsequent/new proprietor (namely the plaintiff) to recognise or to honour the terms (including the tenure) under the tenancy.

[93] The fact of the case *Zelcos Laboratory Sdn Bhd v. FR Development Asia Sdn Bhd & Ors* [2020] 1 LNS 1775 is resemblingly similar to our present case. In that case, the defendants argued that the letter dated 18 December 2019 was a bad "termination notice" because the plaintiff had yet to be registered as the legal owner of the property and that the sub-tenancy between the defendant and main tenant was still subsisting. The court found that the plaintiff's right to possession was premised on the fact that he was the owner of the property, and that the defendant was unlawfully occupying the same. It was not premised on the said letter which was just a precursor to give notice of the plaintiff's intention to enforce his rights. Also, the court found

A that the said notice was also not a notice to terminate the tenancy – the plaintiff has never been in landlord/tenant relationship with main tenant or the defendant sub-tenant. The court then held that the new proprietor of the property was not bound by the tenancy agreement by virtue of s. 213 of the NLC. The previous tenancy has thus been repudiated by the order for sale.

B **[94]** The Supreme Court had in the case of *Hotel Ambassador (M) Sdn Bhd v. Seapower (M) Sdn Bhd* [1991] 1 CLJ 656; [1991] 1 CLJ (Rep) 174 at pp. 179 to 180 discussed and explained vividly on tenancy exempt from registration and the right of the new proprietor:

C > Section 267 states that any certificate of sale given to a purchaser under s. 259(3) of the Code should be treated for all purposes under the Code to be an instrument of dealing and shall be registrable and upon registration thereof the title or interest of the chargor shall pass to and vest in the purchaser, freed and discharged from all liability under the charge. Section 267(2) further provides that notwithstanding that it was granted with the consent in writing of the chargee, no tenancy exempt from registration granted by the chargor after the date of registration of the charge shall be binding on the purchaser unless prior to the date of registration of the certificate of sale, the tenancy had become protected by an endorsement on the register document of title. This statutory provision is crucial in this case because it is not disputed here that there was no endorsement of any tenancy.
>
> Since the appellants' lease expired on 21 June 1976 after which they held over as monthly tenant and the charge which resulted in the sale was registered on 15 May 1982 the tenancy would not bind the respondents until the tenancy has become protected by endorsement prior to the date of registration of the certificate of sale.
>
> Section 267(2) of the Code is an explicit statutory provision and its language clearly requires it to be strictly enforced.

[95] No doubt in *Teo Bee Ann* (*supra*), *Zelcos Laboratory* (*supra*) and *Hotel Ambassador* (*supra*), the tenancy came to an end due to different arising G incidents: succession in *Teo Bee Ann* and order for sale for both *Zelcos Laboratory* and *Hotel Ambassador*. Yet, the material facts and issues remain the same in all these cases and our present case. There is a new registered proprietor and thus putting the position of the tenant under scrutiny. The *ratio* and the decisions of these cases confirm one clear position of law: the H new proprietor has the absolute right to deal with the land and the property. The earlier tenancies come to an end in all these situations unless the new proprietor would like to continue with the tenancy in which case a new agreement needs to be entered into between the parties.

I

[96] This is again the position taken by the court in the case of *Lim Yong Fung lwn. GBT Industries Sdn Bhd* [2016] 1 LNS 994. In that case, the court held that: A

> [19] Peruntukan Seksyen 213(3) dan Seksyen 267(2) & (3) KTN adalah jelas. Di dalam kes ini, tidak ada keterangan yang menunjukkan bahawa Perjanjian Penyewaan tersebut telah diindorskan ke atas dokumen hak milik tanah, justeru itu adalah menjadi dapatan Mahkamah Plaintif tidak boleh diikat dengan sesuatu penyewaan (tenancy) yang tidak dilindungi oleh undang-undang. B
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> (Sila lihat: i. *Hotel Ambassador (M) Sdn Bhd. v. Seapower (M) Sdn Bhd* [1991] 1 CLJ (Rep) 174. ii. *Public Bank Berhad v. Wan Leong Hup Kee Co* [1992] 3 CLJ (Rep) 294.) C
>
> [20] Di dalam hal ini, apabila Perjanjian Penyewaan yang mana Defendan bergantung tidak mempunyai kuatkuasa undang-undang dan maka ia tidak langsung mengikat Plaintif sebagai seorang pembida yang berjaya dan telah membuat pembayaran penuh harga belian hartanah tersebut dan telah juga didaftarkan sebagai tuan punya berdaftar hartanah tersebut kemudiannya. Sebagai pembeli suci hati dalam lelongan awam mengikut perintah bertarikh 16/6/2014, Plaintif adalah berhak untuk mendapatkan relif-relif yang dipohonnya. D

[97] In fact, the later portion of the judgment of Hashim Yeop A Sani CJ (Malaya) in *Hotel Ambassador* (*supra*) has further explained the position of such tenant. His Lordship held that (at p. 181 paras c-d): E

> Under s. 213(1)(a) of the Code "tenancy exempt from registration" means any tenancy or sub-tenancy for a term not exceeding three years granted pursuant to s. 223 of the Code i.e., granted by the proprietor of any alienated land, by any lessee or sub-lessee for the time being and by any person holding under such tenancy or sub-tenancy. F
>
> We agree with the learned Judge that the words "all existing tenancies" must mean only tenancies protected by the Code. We adopt as the learned Judge did what Dr David Wong said in his book *Tenure and Land Dealings in the Malay States* at p. 415 when referring to s. 213(3) of the Code that, unless so protected, a tenancy exempt from registration, granted after the commencement of the present Code will be defeated not only by a subsequent registered dealing but also by a subsequent statutory lien and even a subsequent tenancy both the later being non-registrable. G
>
> In conclusion, what is therefore the status of the appellants *vis-a-vis* the disputed property. According to the learned Judge they are trespassers, or at most, bare licensees based on the facts stated earlier ... We agree. H

[98] The Supreme Court then went on to dismiss the appeal and affirmed the decision of Edgar Joseph Jr J of the High Court that require the tenant to deliver vacant possession to the new proprietor. I

[99] Thus, it is clear to us that when the plaintiff has been duly registered as the land proprietor of the land, any tenancy or lease or any other dealing can only be performed by the plaintiff or his authorised agent or lessee or sublessee. Since the defendant has not entered into any such arrangement with the plaintiff, and the defendant here has never been authorised by the plaintiff to stay or occupy the land, the defendant here has illegally occupying the land.

[100] Another observation of this court is in regard to the tenancy of the defendant with the RAC. A thorough study of the documents exhibited by the defendant itself (through the affidavit in reply affirmed by Datuk Abd Razak bin Muhamad on 30 December 2020 – encl. 21), would be clear to us that the tenancy is also no more in force. The followings are the observation made by this court regarding the chronology of the event *circa* 31 August 2017 up until 2019 evidenced from the documents exhibited in encl. 21.

[101] In a letter dated 20 November 2017 ('the 2017 letter'), the RAC has agreed to backdatedly reduce the rental for the three-years tenancy (between 1 September 2014 and 31 August 2017) from the original RM37,000 a month to RM10,000 a month. Further, a 50% discount was granted to the defendant. Hence, the total rental payable throughout the three year tenancy period was RM180,000 only instead of the original RM546,000 which had been in arrears.

[102] The 2017 letter had also stated that the RAC would renew the tenancy with the defendant if the RM180,000 discounted rental arrears been paid. The RAC would issue an official renewal letter upon such payment.

[103] No such renewal letter was shown or produced by the defendant. Rather, through a letter dated 8 November 2018, the RAC issued a letter stating the illegal occupation of the defendant in the land effective 1 September 2017. The letter also demanded the defendant to vacate the land immediately and pay all arrears within seven days.

[104] Through another letter dated 13 December 2018, the RAC has issued another letter confirming that the RAC has never received any payment from the defendant for the illegal occupation between 1 September 2017 and 30 November 2018. As such, the RAC has requested the defendant to vacate the land by 30 May 2019.

[105] Hence, the tenancy has never been renewed. It expired on 31 August 2017. Since then, the defendant has been illegally occupying the land. Can the defendant still claim that they are authorised to stay there due to the tenancy arrangement with the RAC? Even under this count, the answer is no. In any event, that is the dispute between the defendant and the RAC which is not the focus of this court. However, this fact has further supported my

finding earlier that effective 23 February 2017, the defendant has been occupying the land illegally after the expiry of the tenancy. In fact, under this observation, the illegal occupation/stay began as early as 1 September 2017. The defendant might argue that they were holding over as tenant at will or tenant at sufferance. That discussion might be relevant at the later part of this case when the matter is fixed for assessment of damages.

[106] I also take notice of the key provisions of the tenancy arrangement between the defendant and the RAC through the 2014 letter. At p. 3 of the 2014 under the term "syarat dan terma", the RAC (namely PAK – Perbadanan Aset Keretapi in Bahasa Malaysia) had stipulated that:

> (xii) PAK berhak untuk menamatkan tempoh sewaan dan mengambil balik tapak tersebut pada bila-bila masa dengan memberi tiga puluh (30) hari notis;
>
> (xiii) Sekiranya PAK/Kerajaan memerlukan tapak berkenaan untuk tujuan sebarang projek di masa akan datang, pemohon dikehendaki menyerahkan tapak tersebut tanpa sebarang kos dituntut daripada PAK/Kerajaan.

[107] On that account, even if the tenancy is still subsisting and operative, it can still be terminated by a 30-day notice. There is nothing to stop the determination of the same. Therefore, the allegation by the defendant that it has the right to remain in the land and refuses to move out is totally without basis.

Conclusion

[108] At this time, it is crystal clear to me that there is nothing to negate the plaintiff's case on the strong balance of probability. All documentary evidence adduced through affidavits and exhibits thereto have satisfied me for the entering of the judgment summarily.

[109] It is the finding of this court that the plaintiff has satisfied the court that the defendant plainly and obviously has no defence to the plaintiff's claim. From the moment the land has been alienated to the plaintiff and the plaintiff paid the premium requested, the plaintiff as the registered proprietor of the land has indefeasible title to it. The defendant has failed to challenge the indefeasibility of the plaintiff's title. As the registered proprietor of the land, the plaintiff has rightfully given notice to the defendant to vacate the land. When the defendant fails to do so, the defendant must be accountable for the stay and overstay therefrom.

[110] Thence, the plaintiff's application under O. 14 r. 1 is hereby allowed with costs. However, I have varied the time period pleaded. Since the plaintiff during the course of submission has informed the court that it wished to only focus on the first three prayers of encl. 19 for the purpose of this application, the court hereby:

A (i) declare that the defendant has been illegally in occupation of the land effective 23 October 2017;

(ii) order that the defendant demolishes all structures that had been erected on the said land and hand over the vacant possession on or before 30 April 2021, failing which the plaintiff or its authorised agent(s) may enter the land and demolish all structures thereon. In such event, the defendant has to compensate and be responsible for all the costs for such demolition; and

(iii) order that, for this application, the defendant is to pay the costs of RM10,000 subject to allocator fee at 4% (RM400).

[111] I further order that a date be given for the parties to appear before this court to tax and assess the damages prayed by the plaintiff.